

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

JAMES BALLENGEE,

LISBON PROCESSING, L.L.C.,

and

LISBON REFINERY J.V., L.L.C.,

Defendants.

Civil Action No. 5:11-cv-01781

Judge Donald E. Walter

Magistrate Judge Mark L. Hornsby

**ANSWER BY DEFENDANTS, JAMES BALLENGEE, LISBON PROCESSING, L.L.C.,
AND LISBON REFINERY, J.V., L.L.C., TO THE COMPLAINT OF THE UNITED
STATES OF AMERICA, BY THE AUTHORITY OF THE ATTORNEY GENERAL OF
THE UNITED STATES, ACTING AT THE REQUEST OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
(JURY TRIAL REQUESTED)**

NOW INTO COURT, appearing through their undersigned counsel of record, come defendants, James Ballengee (**Ballengee**), Lisbon Processing, L.L.C. (**Lisbon Processing**), and Lisbon Refinery, J.V., L.L.C. (**Lisbon Refinery**), and in answer to the Complaint of the United States of America, by authority of the Attorney General of the United States, acting at the request of the United States Environmental Protection Agency (**United States**), deny each and every allegation, unless specifically admitted, and further answering respectfully show as follows:

NATURE OF THE ACTION

Defendants admit that this civil action is brought by the United States for injunctive relief and civil penalties under the environmental statutes set forth in the introductory paragraph of the Complaint in connection with the facility located at 18647 Highway 2, Lisbon, Claiborne Parish, Louisiana, 71048, but defendants deny that injunctive relief or penalties are warranted against any of the defendants under the facts as set forth.

JURISDICTION, VENUE AND NOTICE

1.

Admitted.

2.

Admitted.

3.

Admitted.

DEFENDANTS

4.

Admitted.

5.

Admitted.

6.

Denied.

7.

Admitted.

GENERAL ALLEGATIONS

1. Description of Facility

8.

Defendant, Lisbon Refinery, admits that it acquired the facility in 1998. Defendant, James Ballengee, denies that he acquired the Facility at any time.

9.

Defendants, Ballengee and Lisbon Processing, deny that they acquired any part of the facility at any time. Defendant, Lisbon Refinery, admits that, at the time it acquired the facility, it contained an abandoned refinery and a number of above-ground storage tanks.

10.

Admitted.

11.

For lack of sufficient information to form a belief therein, the allegations contained in paragraph 11 are denied.

2. Operations 2006-2007

12.

Defendant, Lisbon Refinery, admits that it stored some petroleum liquids as early as August of 2006. The other two defendants, Ballengee and Lisbon Processing, deny this allegation as it applies to either of them. Defendant, Lisbon Processing, did not even come into existence until October 2006, and did not enter into a lease to conduct operations at the facility until February 2007. Defendant, Lisbon Refinery, admits that it did not have an air permit in

August 2006, but states that it believed that because of the small amounts being stored at the time, it was exempt. Prior to start up of regular operations, which were to include a caustic treatment to remove sulfur from some of the petroleum liquids, a Lisbon representative inquired in January 2007 at the Louisiana Department of Environmental Quality (LDEQ), and was told by an LDEQ representative that there was an active air permit for the site which could be transferred.

13.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 13 are denied.

14.

Defendants admit that LDEQ has a report in its file of an odor complaint in October 2006, and that the LDEQ incident report in its file states that Ballengee made the statements referred to in paragraph 14. Defendants admit that some petroleum liquids were being stored in one or more tanks at the time.

15.

Admitted.

16.

Defendants admit that LDEQ has a report in its file of an odor complaint in January 2007.

17.

Defendants admit that LDEQ records show that LDEQ conducted site visits on 3/21, 22, 23, 2007. Defendants also admit that LDEQ records show that certain tanks were storing

petroleum product, but the records are internally inconsistent as to the number of tanks and the ID of the tanks and the LDEQ records are inconsistent with the allegations in certain respects.

18.

Defendants admit that LDEQ has a report in its file which describes the observations outlined in paragraph 18.

19.

Denied as phrased. Defendants are unable to admit because the LDEQ field report does not specify what tanks were leaking other than F6. The report does say 6 of 8 tanks were leaking, but does not say which of the other ones were leaking.

20.

Denied. A permit application was submitted on behalf of Lisbon Processing only, but as an exemption request, seeking to be granted exempt status from the permitting program.

21.

Denied as to defendants, Lisbon Refinery and Ballengee. As to defendant, Lisbon Processing, denied as phrased. Lisbon Processing submitted an Application on June 8, 2007, and a revised Application on June 12, 2007. Defendant, Lisbon Processing, admits that the permit application was not approved.

22.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 22 are denied.

23.

Denied as phrased. Defendant, Lisbon Processing, did produce earlier records under cover letter of July 18, 2007, and did produce MSDSs with typical vapor pressures reported therein according to the vendors from whom the product was received. Defendants, Lisbon Refinery and Ballengee, deny that they were required to produce such records since neither was the operator of the facility as of the dates alleged.

24.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 24 are denied.

25.

Admitted as to defendant, Lisbon Processing. Denied as to defendants, Lisbon Refinery and Ballengee, neither of whom were operators as of the date alleged.

3. June 21, 2007 Oil Spill

26.

Admitted.

27.

Admitted.

28.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 28 are denied.

29.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 29 are denied.

30.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 30 are denied as phrased. It is admitted that there is a report that six area residents were treated at the Lisbon Hospital on June 21, 2007.

4. 2009 Operations

31.

Admitted as to defendant, Lisbon Refinery. Denied as to defendants, Lisbon Processing and Ballengee.

32.

Admitted as to defendant, Lisbon Refinery. Denied as to defendants, Lisbon Processing and Ballengee, neither of whom were operators as of the date alleged. A permit application was submitted on behalf of Lisbon Refinery on January 30, 2009, seeking recognition of exempt status from the permitting program. Therefore, no permit would be need. LDEQ granted the permit on March 16, 2009.

33.

Admitted.

34.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 34 are denied.

35.

Admitted as to defendant, Lisbon Refinery. Denied as to defendants, Lisbon Processing and Ballengee, neither of whom were operators as of the date alleged.

36.

Denied as phrased.

STATUTORY AND REGULATORY FRAMEWORK
CLEAN AIR ACT

37.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

38.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

39.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

40.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

41.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

42.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

43.

Admitted that this is a correct statement concerning the regulations, but avers that it requires no further answer of defendants.

44.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

45.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

46.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

47.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

48.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

49.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

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Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

51.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

52.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

53.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

54.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

55.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

56.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

57.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

FIRST CLAIM FOR RELIEF—CLEAN AIR ACT
Failure to Properly Store Volatile Petroleum Liquids—Subpart K Tanks

58.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 57 of the Complaint.

59.

Admitted.

60.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 60 are denied.

61.

Denied.

62.

Denied.

63.

Denied.

64.

Admitted, but vapor recovery system is not needed unless tanks are storing liquids with true vapor pressure greater than 11.1. psia.

65.

Denied.

66.

Denied.

SECOND CLAIM FOR RELIEF—CLEAN AIR ACT
Failure to Properly Store Volatile Petroleum Liquids—Subpart Ka Tanks

67.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 66 of the Complaint.

68.

Admitted.

69.

Denied.

70.

Denied as to defendant, Lisbon Processing. According to an LDEQ memo dated 4/16/07, Tank J10 was found to be empty at the time of the March 21, 2007 inspection. There is no

indication that this tank had product for any significant length of time before that time and defendant denies that there has been any product stored in that tank since March 21, 2007. In addition, denied as to defendants Lisbon Refinery and Ballengee, neither of whom were operators as of the dates alleged.

71.

Admitted that there was no closed vent system or control device on Tank J10, but such a system is not needed unless the tank is storing liquids with true vapor pressure greater than 11.1 psia, and there is no indication that Tank J10 was operated at vapor pressures above 11.1 psia at all, or certainly not for any significant time.

72.

Denied.

73.

Denied.

THIRD CLAIM FOR RELIEF — CLEAN AIR ACT
Failure to Properly Store Volatile Organic Liquids — Subpart Kb Tanks

74.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 73 of the Complaint.

75.

Admitted.

76.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 76 are denied.

77.

Denied.

78.

Denied.

79.

Denied.

80.

Denied.

81.

Admitted, but vapor recovery system is not needed unless tanks are storing liquids with true vapor pressure greater than 11.1. psia. All that is needed is an internal floating roof with an appropriate seal as long as the vapor pressure is not greater than 11.1 psia, and in fact, that was in place for these tanks.

82.

Denied.

83.

Denied.

FOURTH CLAIM FOR RELIEF — CLEAN AIR ACT
Failure to Maintain Records of Stored Petroleum Liquids — Subpart K Tanks

84.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 83 of the Complaint.

85.

Admitted.

86.

Admitted that defendant, Lisbon Refinery, stored petroleum product at the facility between August 2006 and January 2007, but denied during this time period for the remaining defendants. Admitted that defendant, Lisbon Processing, stored petroleum product at the facility between February 2007 and early August 2007, but denied for this time period for the remaining defendants as they were not operators of the facility as of the time period alleged.

87.

Admitted as to defendant, Lisbon Processing. Defendants, Lisbon Refinery and Ballengee, deny that they were required to produce such records since neither was the operator of the facility as of the date alleged.

88.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 88 are denied.

89.

Denied.

90.

Denied.

91.

Defendant, Lisbon Refinery, admits that it recommenced the storage of petroleum liquids on or about March 2, 2009. Defendants, Lisbon Processing and Ballengee, were not operators as

of the date alleged and therefore, this allegation of paragraph 91 is denied as to them. Defendant, Lisbon Refinery, denies the allegation that it did not have records as to the vapor pressure of petroleum liquids being stored.

92.

Admitted as to defendant, Lisbon Refinery. Defendants, Lisbon Processing and Ballengee, deny that they analyzed any samples since neither was the operator of the facility as of the date alleged.

93.

Denied.

94.

Denied.

95.

Denied.

FIFTH CLAIM FOR RELIEF — CLEAN AIR ACT
Failure to Maintain Records of Stored Petroleum Liquids — Subpart Ka Tank

96.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 95 of the Complaint.

97.

Admitted.

98.

Denied as phrased. According to an LDEQ memo dated 4/16/07, Tank J10 was found to be empty at the time of the March 21, 2007 inspection. There is no indication that this tank had product for any significant length of time before that time and defendants deny that there has been any product stored in that tank since March 21, 2007.

99.

Admitted as to defendant, Lisbon Processing. Defendants, Lisbon Refinery and Ballengee, deny that they were required to produce such records since neither was the operator of the facility as of the date alleged.

100.

Denied as phrased. In addition, according to an LDEQ memo dated 4/16/07, Tank J10 was found to be empty at the time of the March 21, 2007 inspection. There is no indication that this tank had product for any significant length of time before that time and defendants deny that there has been any product stored in that tank since March 21, 2007. As such, there would have been no records required after March 21, 2007. Defendants, Lisbon Refinery and Ballengee, deny that they were required to produce such records since neither was the operator of the facility as of the time period alleged.

101.

Denied as phrased. In addition, according to an LDEQ memo dated 4/16/07, Tank J10 was found to be empty at the time of the March 21, 2007 inspection. There is no indication that this tank had product for any significant length of time before that time and defendants deny that there has been any product stored in that tank since March 21, 2007. As such, there would have

been no records required after March 21, 2007. Defendants, Lisbon Refinery and Ballengee, deny that they were required to produce such records since neither was the operator of the facility as of the time period alleged.

102.

Denied.

SIXTH CLAIM FOR RELIEF — CLEAN AIR ACT
Failure to Maintain Records of Stored Petroleum Liquids — Subpart Kb Tanks

103.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 102 of the Complaint.

104.

Admitted.

105.

Admitted.

106.

Admitted as to defendant, Lisbon Processing. Defendants, Lisbon Refinery and Ballengee, deny that they were required to produce such records since neither was the operator of the facility as of the date alleged.

107.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 107 are denied.

108.

Denied.

109.

Defendant, Lisbon Refinery, admits that it recommenced the storage of petroleum liquids in Tank B2 on or about March 2, 2009. Defendants, Lisbon Processing and Ballengee, were not operators as of the time alleged and therefore, this allegation is denied as to them. Defendant, Lisbon Refinery, denies the allegation that it did not have records as to the vapor pressure of petroleum liquids being stored.

110.

Admitted as to defendant, Lisbon Refinery. Denied as to defendants, Lisbon Processing and Ballengee, since neither was the operator of the facility as of the date alleged.

111.

Denied.

112.

Denied.

113.

Denied.

SEVENTH CLAIM FOR RELIEF - CLEAN AIR ACT
Failure to Adhere to Good Air Pollution Control Practices

114.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 113 of the Complaint.

115.

Admitted.

116.

Defendants admit that LDEQ has reports in its file of odor complaints in the months and years alleged. For lack of information to form a belief therein the remaining allegations contained in paragraph 116 are denied.

117.

Admitted.

118.

Defendants admit that LDEQ has a report in its file consistent with this allegation.

119.

Defendants admit that LDEQ has a report in its file consistent with this allegation.

120.

Defendants admit that LDEQ has a report in its file consistent with this allegation.

121.

Defendants are unable to admit because the LDEQ field report does not specify what tanks were leaking other than F6. The report does say 6 of 8 tanks were leaking, but does not say which of the other ones were leaking.

122.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 122 are denied.

123.

Denied.

124.

Denied.

125.

Denied.

126.

Denied.

127.

Denied.

128.

Denied.

129.

Admitted as to defendant, Lisbon Refinery. Denied as to defendants, Lisbon Processing and Ballengee, since neither was the operator of the facility as of the dates alleged.

130.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 130 are denied.

131.

Denied as phrased.

132.

Admitted.

133.

Denied.

134.

Denied.

135.

Denied.

EIGHTH CLAIM FOR RELIEF — CLEAN AIR ACT
Operating Without a Valid Air Permit

136.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 135 of the Complaint.

137.

Defendant, Lisbon Refinery, admits that it did not have an air permit in August 2006 and admits that it stored some petroleum liquids as early as August of 2006, but states that it believed that because of the small amounts being stored at the time, it was exempt. Defendant, Lisbon Processing, did not even come into existence until October 2006, and did not enter into a lease to conduct operations at the facility until February 2007. Lisbon Processing states that when it became the operator in February 2007, it believed that because of the small amounts being stored at the time, it was exempt. Prior to start up of regular operations, which were to include a caustic treatment to remove sulfur from some of the petroleum liquids, a Lisbon representative inquired in January 2007 at the Louisiana Department of Environmental Quality (LDEQ), and was told by an LDEQ representative that there was an active air permit for the site which could be transferred. Defendant, Ballengee, denies that he was required to have an air permit as he was never an owner and/or operator of the subject facility.

138.

Defendant, Lisbon Refinery, admits that it did not have an air permit in August 2006 and admits that it stored some petroleum liquids as early as August of 2006, but states that it believed that because of the small amounts being stored at the time, it was exempt. Defendant, Lisbon Processing, did not even come into existence until October 2006, and did not enter into a lease to conduct operations at the facility until February 2007. Lisbon Processing states that when it became the operator in February 2007, it believed that because of the small amounts being stored at the time, it was exempt. Prior to start up of regular operations, which were to include a caustic treatment to remove sulfur from some of the petroleum liquids, a Lisbon representative inquired in January 2007 at the Louisiana Department of Environmental Quality (LDEQ), and was told by an LDEQ representative that there was an active air permit for the site which could be transferred. Once defendant Lisbon Processing was told by LDEQ that it needed an air permit in March 2007, it filed an Air Permit Application in April 2007 seeking an exemption, and a subsequent application was filed in June 2007. The applications were continuously pending, but LDEQ refused to give the subsequent application expedited consideration on the basis of "Compliance History," and then, after all petroleum liquids were removed in August 2007, LDEQ suggested the application be withdrawn in September 2007, which was done. Defendant, Ballengee, denies that he was required to have an air permit as he was never an owner or operator of the subject facility.

139.

Defendants, Ballengee and Lisbon Processing, deny this allegation as it applies to either of them. Defendant, Lisbon Refinery, admits that it did not have an air permit prior to March 16,

2009, but states that it believed that because of the small amounts that were going to be stored at the time, it was exempt. Prior to the acceptance of any product in any tank, which occurred on March 2, 2009, Lisbon representatives met with LDEQ on January 15, 2009 to present emissions calculations which indicated that air emissions would be less than 5 tons per year and indicated that Lisbon was exempt from the need of an air permit, but that Lisbon Refinery would submit an air permit in an act of good faith, which it did. The permit was issued by the LDEQ on March 16, 2009.

140.

Denied.

141.

Denied.

NINTH CLAIM FOR RELIEF — CLEAN AIR ACT
Failure to Include Information in Air Permit Applications

142.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 141 of the Complaint.

143.

Denied as phrased. Defendant, Lisbon Processing, believed that it was exempt from air permitting requirements. In good faith, it filed an air permit application dated April 26, 2007 that included data indicating that, based on total emissions, it was exempt. In a revised filing dated June 8, 2007, an air permit application was submitted indicating a larger total emissions, which on annual basis would have indicated that it was not exempt, however, because of events

in June and July, 2007, the facility ceased operations in early August 2007. Therefore, total emissions never exceeded the exempt amount. Again, prior to recommencing operations on March 2, 2009, Lisbon representatives met with LDEQ on January 15, 2009 to present emissions calculations which indicated that air emissions would be less than 5 tons per year and indicated that Lisbon was exempt from the need of an air permit, but that Lisbon Refinery would submit an air permit in an act of good faith, which it did. The air permit application was submitted on January 30, 2009, that included data indicating that based on total emissions, it was exempt. The permit was issued by the LDEQ on March 16, 2009.

144.

Admitted.

145.

Denied as phrased. Defendant, Lisbon Refinery, admits that samples taken on April 8, 2009 ,from Tank A1 and B2 tested with a Reid Vapor Pressure of 10.4 psia and 10.1 psia respectively. However, later sampling taken by both Lisbon Refinery and LDEQ confirmed that material being stored was within the permit requirements and was below a Reid Vapor Pressures of 4 psia.

146.

Denied.

147.

Denied.

STATUTORY AND REGULATORY FRAMEWORK
CLEAN WATER ACT

148.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

149.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

150.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

151.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

152.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

153.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

154.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

155.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

TENTH CLAIM FOR RELIEF — CLEAN WATER ACT
Unlawful Discharge of Oil into Navigable Waters and Waters of the State of Louisiana

156.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 155 of the Complaint.

157.

Admitted.

158.

Admitted.

159.

Defendant, Lisbon Processing, admits that there was a protective dike in place around Tank I9, but denies the remaining allegations of Paragraph 159 of the Complaint. Denied as to the remaining defendants.

160.

Denied as phrased.

161.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 161 are denied.

162.

Admitted.

163.

Admitted.

164.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 164 are denied.

165.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 165 are denied.

166.

Denied.

ELEVENTH CLAIM FOR RELIEF — CLEAN WATER ACT
Failure to Provide a Secondary Means of Containment

167.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 166 of the Complaint.

168.

For lack of sufficient information to form a belief therein the allegations contained in paragraph 165 are denied.

169.

Denied as phrased. Defendant, Lisbon Processing, was only involved in processing (as that term is understood) in the first half of 2007. Defendant, Lisbon Processing, admits that it was involved in the storage of petroleum products during February 2007 to August 2007. Defendant, Lisbon Refinery, admits that it was involved in the storage and transfer during the latter part of 2006, possibly early part of 2007, and again in 2009. Defendant, Ballengee, denies that he engaged in any of the activity set forth in Paragraph 169 of this Complaint.

170.

Admitted.

171.

Denied.

172.

Denied.

173.

Denied.

STATUTORY AND REGULATORY FRAMEWORK RCRA

174.

Admitted that this is a correct statement, but avers that it requires no further answer of Defendants.

175.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

176.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

177.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

178.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

179.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

180.

Admitted that this is a correct quotation of the regulation, with certain exclusions set forth in the regulation, but avers that it requires no further answer of defendants.

181.

Admitted that this is a correct quotation of the regulation, with certain exclusions set forth in the regulation, but avers that it requires no further answer of defendants.

182.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

183.

Admitted that this is a correct quotation of the regulation, with certain exclusions set forth in the regulation, but avers that it requires no further answer of defendants.

184.

Admitted that this is a correct quotation of the regulation, but avers that it requires no further answer of defendants.

185.

Admitted that this is a correct statement of the regulation, but avers that it requires no further answer of defendants.

186.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

187.

Admitted that this is a correct quotation of the regulation, with certain exclusions set forth in the regulation, but avers that it requires no further answer of defendants.

188.

Admitted that this is a correct statement, but avers that it requires no further answer of defendants.

TWELFTH CLAIM FOR RELIEF — RCRA
Storing Hazardous Waste without a Permit

189.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 188 of the Complaint.

190.

Denied.

191.

Denied as phrased. The accuracy and/or correctness of this information is unknown to these defendants. Defendants admit that, based on LDEQ records, a previous owner/operator had tested the contents of five roll-off boxes and determined only three of the boxes contained material considered hazardous.

192.

Denied as phrased. Defendants, Lisbon Refinery and Lisbon Processing, admit that the roll-off boxes and their contents continue to be located on the subject property. Defendant, Ballengee, denies that he engaged in any of the activity set forth in Paragraph 192 of this Complaint.

193.

Defendants, Lisbon Refinery and Lisbon Processing, admit that they have never had permits to store hazardous waste pursuant to RCRA. Defendant, Ballengee, denies that he engaged in any of the activity set forth in Paragraph 193 of this Complaint. Defendants state

that, under the circumstances, it was their belief that they were not required to obtain a permit under RCRA.

194.

Denied.

THIRTEENTH CLAIM FOR RELIEF — RCRA
Failure to Make an Adequate Hazardous Waste Determination

195.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 194 of the Complaint.

196.

Admitted as to Defendant, Lisbon Processing. Denied as to remaining Defendants.

197.

Denied as phrased. Defendant, Lisbon Processing, admits that water drained from the Creek did contain material from the spill and was placed in Tank K11.

198.

Admitted as to defendant, Lisbon Processing. Denied as to the remaining Defendants.

199.

Denied as phrased. Defendant, Lisbon Processing, admits that water drained from the Creek did contain material from the spill and was placed in Tank K11. Defendant, Lisbon Processing, admits that between June 23, 2007 and July 6, 2007, approximately 7,500 barrels, or approximately 315,000 gallons, of creek water and storm water were placed in Tank K11.

200.

Denied.

201.

Denied.

202.

Admitted as to defendant, Lisbon Processing. Denied as to the remaining Defendants.

203.

Denied.

204.

Denied.

205.

Denied.

FOURTEENTH CLAIM FOR RELIEF — RCRA
Storing Hazardous Waste Without a Permit

206.

Defendants adopt the answers and responses already given herein in response to paragraphs 1 through 25 and 37 through 205 of the Complaint.

207.

Admitted.

208.

Admitted as to defendant, Lisbon Processing. Denied as to the remaining defendants.

209.

Admitted.

210.

Denied.

211.

Admitted as to defendant, Lisbon Processing. Denied as to the remaining defendants.

212.

Defendants, Lisbon Refinery and Lisbon Processing, admit that they have never had permits to store hazardous waste pursuant to RCRA. Defendant, Ballengee, denies that he engaged in any of the activity set forth in Paragraph 212 of this Complaint. Defendants state that, under the circumstances, it was their belief that they were not required to obtain a permit under RCRA.

213.

Denied.

AFFIRMATIVE DEFENSES

1.

Defendants plead good faith as an affirmative defense, and affirmatively show that they have always acted, and/or attempted to act, in good faith in connection with operations conducted at the subject facility, and/or in answering and/or responding to actions and/or activities, inquiries and/or requests for information, on the part of and/or from LDEQ and/or the EPA.

2.

Defendants plead waiver and/or estoppel as an affirmative defense.

3.

To the extent any violations of laws and/or regulations occurred as a result of any activities, conduct, actions, and/or non-actions, on the part of defendants, any one or more of them, which has been and is denied, defendants show that any such violations were unintended, and/or were minimal in nature, and have been rectified and/or corrected through affirmative actions undertaken by defendants.

4.

To the extent any harm and/or injury occurred as a result of any activities, conduct, actions, and/or non-actions, on the part of defendants, any one or more of them, which has been and is denied, defendants show that any such harm and/or injury was unintended, and/or was minimal in nature, and has been rectified and/or corrected through affirmative actions undertaken by defendants.

5.

Defendant, Ballengee, affirmatively denies that he was ever an owner and/or operator of the subject facility.

6.

Defendant, Lisbon Processing, affirmatively denies that it was ever the owner of the subject facility, and denies that it was an operator before February of 2007, or after September 2007, when it discontinued offering services and was shut down

7.

Defendants affirmatively deny that any of the alleged violations existed and/or continued to exist for any significant length of time.

8.

In connection the RCRA claim as to the roll-off boxes, defendants affirmatively plead fault on the part of a third party or parties for whom they are not responsible or liable as an affirmative defense.

9.

In connection the RCRA claim as to the roll-off boxes, defendants affirmatively plead as an affirmative defense that any claim for civil penalties is barred by the five year statute of limitations set forth in 28 U.S.C. § 2462, since EPA and LDEQ were aware of the circumstances concerning the roll-off boxes in late 1998 and early 1999, and thereafter in July 2001 sent PRP letters to multiple parties and held a PRP meeting in October 2001, at which the roll-off boxes were an issue.

10.

In connection with the air emissions claims, defendants affirmatively plead as an affirmative defense that they were at all times exempt from any permit provisions under the statutory exemption set forth in La. Admin Code § 33: III.501 (B) since facility-wide potential emissions never exceeded (a) five tons per year for each criteria pollutant, (b) 15 tons per year of all such defined pollutants combined; and (c) the minimum emission rate (MER) for each toxic air pollutant established by Tables 51.1 and 51.3 of LAC 33:III. Chapter 51.

11.

In connection the RCRA claim as to Tank K, since the defendants removed the contents of Tank K to approved sites in late April and early May 2008, within ninety (90) days of having analytical results indicating hazardous levels of benzene, and since this issue was not raised in a

Compliance Order until the end of 2008, therefore defendants affirmatively plead as an affirmative defense that any claim for civil penalties is barred by waiver and/or estoppel.

12.

Defendants pray for a trial by jury on all issues triable to a jury.

WHEREFORE, after due proceedings are had, defendants, James Ballengee, Lisbon Processing, L.L.C., and Lisbon Refinery, J.V., L.L.C., respectfully pray that the claims asserted by plaintiff, United States of America, be denied and dismissed, with prejudice, at plaintiff's costs, and defendants respectfully pray for a trial by jury on all issues triable to a jury.

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Processing, L.L.C. and Lisbon Refinery, J.V.
L.L.C.,*

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

JAMES BALLENGEE,

LISBON PROCESSING, L.L.C.,

and

LISBON REFINERY J.V., L.L.C.,

Defendants.

Civil Action No. 5:11-cv-01781

Judge Donald E. Walter

Magistrate Judge Mark L. Hornsby

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2012, Answer by Defendants, Pursuant to Local Rule 7.9 filed by James Ballengee, Lisbon Processing, L.L.C. and Lisbon Refinery, J.V. L.L.C., was filed electronically with the Clerk of Court using the CM/ECF system. All counsel will be served through the CM/ECF system. There are no known non-CM/ECF participants.

/s/ Thomas E. Balhoff

THOMAS E. BALHOFF, T.A. (#2716)

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